



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0869]

RIN 1625-AA00

Safety Zone; Bayou Lafourche, Galliano, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Bayou Lafourche. This temporary safety zone encompasses an area 440 yards north and south of position 29°25'28.6"N 90°17'31.5"W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the construction of the Airport Road Bridge. Entry of vessels or persons into this zone and movement of vessels within this zone is prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Houma (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 15, 2023. For the purposes of enforcement, actual notice will be used from November 8, 2023 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0869 in the search box and click "Search." Next in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Justin Kimrey, Waterways Management and

Facilities Division Chief, U.S. Coast Guard; telephone: (985) 850-6473 email:

justin.r.kimrey@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Establishing the safety zone is necessary to facilitate safe construction of a bridge that is in a location frequented by commercial and recreational vessel traffic. Immediate action is needed to respond to the potential safety hazards associated with bridge construction operations. We must establish the safety zone by November 8, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with construction of the Airport Road Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Marine Safety Unit Houma (COTP) has determined that potential hazards associated with the bridge construction operations continuing through November 15, 2023, will be a safety concern for anyone within 440 yards north or south around position 29°25'28.6"N 90°17'31.5"W in Bayou Lafourche, Galliano, LA. This rule is needed to protect life and property on the navigable waters while bridge construction operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from November 8, 2023, through November 15, 2023. This temporary safety zone encompasses an area 440 yards north and 440 yards south of position 29°25'28.6"N 90°17'31.5"W., in Bayou Lafourche, Galliano, LA. The duration of the zone is intended to protect life and property on these navigable waters for the duration of bridge construction. No vessel or person will be permitted to enter and move within the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Houma. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67. Persons and vessels permitted to enter or to move within this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement periods and changes through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location of the safety zone. Vessel traffic will have alternate routes of navigation to reach their desired destinations. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal Government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone that will prohibit entry within 440 yards north and 440 yards south of vessels and machinery being used for bridge construction operations. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0869 to read as follows:

§ 165.T08-0869 Safety Zone; Bayou Lafourche, Galliano, LA.

(a) *Location.* The following area is a safety zone: All waters of Bayou Lafourche, from surface to bottom 440 yards north and 440 yards south of position 29°25'28.6"N 90°17'31.5"W. These coordinates are based the 1984 World Geodetic System (WGS 84).

(b) *Definition.* A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Houma.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry into or remaining within this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Houma (COTP) or designated representative.

(2) To enter the safety zone described in paragraph (a) of this section, you must contact the COTP or a designated representative and obtain permission to do so. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (985) 665-9180. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by COTP or the designated

representative.

(d) *Enforcement period.* This section will be enforced from November 8, 2023, through November 15, 2023. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: November 7, 2023.

L. T. O'Brien,
Captain, U.S. Coast Guard,
Captain of the Port, Marine Safety Unit Houma.

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